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5 LEONELA ARACELY VALDEZ HERRERA

6  
7 **IN THE UNITED STATES DISTRICT COURT**  
8 **CENTRAL DISTRICT OF CALIFORNIA**  
9 **WESTERN DIVISION**

10 LEONELA ARACELY VALDEZ  
HERRERA,

11  
12 Plaintiff,

13 v.

14 FIRST NATIONAL BANK OF  
OMAHA, N.A.,

15  
16 Defendant(s).  
17

Case No.: 2:17-cv-1136

**COMPLAINT**

1. **Violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq.**  
2. **Violations of the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788 et seq.**

18 LEONELA ARACELY VALDEZ HERRERA (Plaintiff), by her attorneys,  
19 WESTGATE LAW, hereby alleges and states as follows:

20 **INTRODUCTION**

21 1. Count I of Plaintiff's Complaint is based on the Telephone Consumer  
22 Protection Act, 28 U.S.C. § 227 *et seq.* (TCPA).

23 2. Count II of Plaintiff's Complaint is based on the Rosenthal Fair Debt  
24 Collection Practices Act, Cal. Civ. Code §1788 *et seq.* (RFDCPA).  
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**JURISDICTION AND VENUE**

3. Jurisdiction of this Court over Plaintiff's Complaint arises pursuant arises pursuant to 28 U.S.C. § 1331 as Plaintiff's claims arise under the laws of the United States, and this Court maintains supplemental jurisdiction over the state law claims alleged herein.

4. Defendant conducts business in the State of California thereby establishing personal jurisdiction.

5. Venue is proper pursuant to 28 U.S.C. § 1391(b) because the acts and transactions alleged in this Complaint occurred here, Plaintiff resides here, and Defendant transacts business here.

**PARTIES**

6. Plaintiff is a natural person residing in Downey, Los Angeles County, California.

7. Plaintiff is a "debtor" as that term is defined by Cal. Civ. Code § 1788.2(h).

8. Defendant First National Bank of Omaha, N.A. is a business entity with a principal place of business in Omaha, NE.

9. Defendant is a "debt collector" as that term is defined by Cal. Civ. Code § 1788.2(c), and sought to collect a "consumer debt" as that term is defined by Cal. Civ. Code § 1788.2(f).

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

**FACTUAL ALLEGATIONS**

11. In 2016, and specifically within one (1) year prior to the commencement of the present action, Defendant contacted Plaintiff to collect money, property or their equivalent, due or owing or alleged to be due or owing on a First Bankcard credit card issued by Defendant.

12. Plaintiff's alleged debt arose from consumer credit transactions.

13. In 2016, and specifically within one (1) year prior to the commencement of the present action, Defendant, Defendant constantly and continuously placed collection calls to Plaintiff's cellular phone ending in 6948.

14. Defendant placed collection calls from numbers including, but not limited to, (800) 537-3302 and (800) 424-6920

15. On several occasions when Plaintiff answered Defendant's calls, Plaintiff was greeted with an automated and/or pre-recorded message from Defendant's representative, which directed Plaintiff to return the call.

16. On or around January 4, 2017 at 7:15 p.m., Plaintiff received a call from Defendant from telephone number (800) 537-3302.

17. In the course of the telephone conversation on or around January 4, 2017 at 7:15 p.m., Plaintiff spoke with Defendant's representative, "Jodi," and requested that Defendant cease calling her cellular telephone.

18. Despite Plaintiff's request to cease calling, Defendant continued to place autodialed collection calls to Plaintiff.

19. Despite Plaintiff's request to cease calling, Defendant's communicated with Plaintiff with such frequency as to be unreasonable under the circumstances and to constitute harassment, including placing multiple collection calls in the same day. As an illustrative example, and not one of limitation, Defendant placed at least

1 forty-two (42) automated collection calls to Plaintiff between January 5, 2017 and  
2 February 3, 2017.

3 20. The natural and probable consequences of Defendant's conduct was to  
4 harass, oppress, or abuse Plaintiff in connection with the collection of the alleged  
5 debt.

6 21. As a result of Defendant's incessant calls, Plaintiff suffered a continuous  
7 invasion of her privacy.

8 22. At all times relevant to this action, while conducting business in  
9 California, Defendant has been subject to, and required to abide by, the laws of the  
10 United States, which included the TCPA and its related regulations that are set forth  
11 at 47 C.F.R. § 64.1200 ("TCPA Regulations"), as well as the opinions, regulations  
12 and orders issued by the courts and the FCC implementing, interpreting and  
13 enforcing the TCPA and the TCPA regulations.

14 23. At all times relevant to this action, Defendant owned, operated and or  
15 controlled an "automatic telephone dialing system" as defined by TCPA 47 U.S.C.  
16 § 227(a)(1) that originated, routed and/or terminated telecommunications.

17 24. Within four years prior to the filing of this action, Defendant called  
18 Plaintiff at Plaintiff's cellular telephone using equipment which has the capacity to  
19 store or produce telephone numbers to be called, using random or sequential number  
20 generator and to dial such numbers, also known as an "automatic telephone dialing  
21 system" as defined by TCPA 47 U.S.C. § 227(a)(1)(A) and (B).

22 25. Defendant never received Plaintiff's consent to call Plaintiff on Plaintiff's  
23 cellular telephone using an "automatic telephone dialing system" or an "artificial or  
24 prerecorded voice" as defined in 47 U.S.C. § 227 (a)(1).

25 26. Even assuming arguendo that Defendant did have consent to call Plaintiff

1 on Plaintiff's cellular telephone using an ATDS or an artificial or prerecorded voice,  
2 that consent was subsequently revoked by Plaintiff by demanding that Defendant's  
3 calls cease.

4 27. At no time have Plaintiff and Defendant had an "established business  
5 relationship" as defined by 47 U.S.C. § 227(a)(2).

6 28. Defendant is not a tax exempt nonprofit organization.

7 29. Defendant's violation of the TCPA was willful because Plaintiff requested  
8 that Defendant cease calling on countless occasions.

9 **FIRST CAUSE OF ACTION**  
10 **Violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227**

11 30. Plaintiff incorporates by reference all of the above paragraphs of this  
12 Complaint as though fully stated herein.

13 31. Defendant violated the TCPA. Defendant's violations include, but are not  
14 limited to the following

15 (a) Within four years prior to the filing of this action, on multiple  
16 occasions, Defendant violated TCPA 47 U.S.C. § 227 (b)(1)(A)(iii)  
17 which states in pertinent part, "It shall be unlawful for any person  
18 within the United States . . . to make any call (other than a call made  
19 for emergency purposes or made with the prior express consent of the  
20 called party) using any automatic telephone dialing system or an  
21 artificial or prerecorded voice — to any telephone number assigned to  
22 a . . . cellular telephone service . . . or any service for which the called  
23 party is charged for the call.

24 (b) Within four years prior to the filing of this action, on multiple  
25 occasions, Defendant willfully and/or knowingly contacted Plaintiff at

1 Plaintiff's cellular telephone using an artificial prerecorded voice or an  
2 automatic telephone dialing system and as such, Defendant knowing  
3 and/or willfully violated the TCPA.

4 32. As a result of Defendant's violations of 47 U.S.C. § 227, Plaintiff is  
5 entitled to an award of five hundred dollars (\$500.00) in statutory damages, for each  
6 and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B). If the Court finds that  
7 Defendant knowingly and/or willfully violated the TCPA, Plaintiff is entitled to an  
8 award of one thousand five hundred dollars (\$1,500.00), for each and every violation  
9 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

10 33. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct  
11 in the future.

12 34. WHEREFORE, Plaintiff prays for relief as set forth below.

13 **SECOND CAUSE OF ACTION**  
14 **Violations of the Rosenthal Fair Debt Collection Practices Act,**  
15 **Cal. Civ. Code §1788**

16 35. Plaintiff repeats and realleges all of the allegations in Count I of Plaintiff's  
17 Complaint as the allegations in Count II of Plaintiff's Complaint.

18 36. Defendant violated the RFDCPA based on the following:

- 19 a. Defendant violated §1788.11(d) of the RFDCPA by causing a  
20 telephone to ring repeatedly or continuously to annoy the person  
21 called;  
22 b. Defendant violated §1788.11(e) of the RFDCPA by communicating,  
23 by telephone or in person, with the debtor with such frequency as to be  
24 unreasonable and to constitute an harassment to the debtor under the  
25 circumstances;  
c. Defendant violated §1788.17 of the RFDCPA by continuously failing

1 to comply with the statutory regulations contained within the FDCPA,  
2 15 U.S.C. § 1692.

3 WHEREFORE, Plaintiff prays for relief as set forth below.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for the following relief:

- 6 1. For statutory damages to the extent permitted by law;  
7 2. For punitive damages to the extent permitted by law;  
8 3. For pre-judgment interest to the extent permitted by law;  
9 4. For injunctive relief as permitted by law;  
10 5. For an award of attorney's fees, costs and expenses incurred in the  
11 investigation, filing, and prosecution of this action; and  
12 6. For such other and further relief as the Court may deem just and  
13 proper.

14  
15 Date: February 13, 2017

RESPECTFULLY SUBMITTED,

16 By: /s/ Matthew A. Rosenthal  
17 Matthew A. Rosenthal  
18 Attorney for Plaintiff  
19 LEONELA ARACELY  
20 VALDEZ HERRERA  
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